IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2007

CORAM:

THE HONOURABLE MR. JUSTICE F.M. IBRAHIM KALIFULLA

&

THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.11547 of 2002 & W.P.M.P. No.15574 of 2002

1 V. Radhakrishnan
2 K.P. Gopal
3 N. Murali
4 J. Nicky Joseph ... Petitioners

vs.

1 The Registrar
Central Administrative Tribunal
Madras Bench
Chennai

2 Union of India
represented by its Secretary to Government
Department of Environment and Forest
Paryavaran Bhavan
CGO Complex, Lodhi Road
New Delhi - 110 003

3 The Directorate of Forest Education
Ministry of Environment and Forest
Dehra Dun (U.P.)

4 The State Forest Service College
represented by its Principal
Coimbatore - 641 002 ... Respondents

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Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus pertaining to the order passed by the first respondent in O.A. No.658 of 1998 dated 13.06.2000, to quash the same and to consequently direct the respondents 2 to 4 to regularise the services of the petitioners.

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For petitioners D. Hariparanthaman

For RR 2 to 4 Mr. Raman Laal, SCGSC
for Mr. M.T. Arunan

O R D E R

V. DHANAPALAN, J.

The petitioners seek to quash the order dated 13.06.2000 passed by the first respondent Tribunal in O.A. No.658 of 1998 and to consequently direct the respondents 2 to 4 to regularise their services.

2. The petitioners have been employed as Casual Daily Labourers (CDL) in Group D posts for the last two decades in the 4th respondent College (hereinafter referred to as "the College") and have not been conferred permanent status by it despite their repeated representations. In O.A. Nos. 367 to 370 of 1992 filed by some of the CDLs seeking to regularise their services, the Tribunal directed College to absorb the petitioners in regular posts as and when vacancies arise and not to terminate them till such time. Since no response was forthcoming, another batch of applications was preferred in O.A. Nos.1789 and 1799 of 1992 in which the Tribunal directed the College to prepare a scheme for regularisation of the applicants within a period of three months and to fit in them under the said scheme as and when vacancies arise. Consequently, the College, by its order dated 22.03.1994, granted temporary status to 15 CDLs which included the petitioners also with effect from 01.09.1993. Since the order of the Tribunal to frame a scheme for regularisation of CDLs did not bring out any positive result, the petitioners herein, along with two others, filed O.A. No.658 of 1998 seeking regularisation of their services with effect from 01.03.1994 by complying with the orders of the Tribunal in the earlier O.As.

3. The Tribunal, though moved by the pitiable plight of the applicants, by holding that the creation/abolition of posts is always within the administrative domain of the Head of the Department controlling the College and as such, it cannot make a roving enquiry in the matter, disposed of the O.As. with a direction to the College to take up the matter with the headquarters office on an expeditious basis. Not getting any positive direction from the Tribunal with regard to their regularisation , the petitioners have come out with this petition to quash the order of the Tribunal in O.A. No.658 of 1998 and for a direction to respondents 2 to 4 to regularise their services.

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4. The stand taken by the respondents 2 to 4 before the Tribunal as well as this Court, in nutshell, is that creation of posts involves cumbersome, complex and time-consuming formalities and hence, the matter is still under consideration by the Government of India and till such time the posts are created, the petitioners will be absorbed in the event of any Group D post falling vacant.

5. We have given our careful thought to the arguments of Mr. D. Hariparanthaman, learned counsel for the petitioners and Mr. Raman Lal, learned SCGSC for the respondents 2 to 4.

6. The learned counsel for the petitioners has contended that the continuing the petitioners as temporary employees for years together and depriving them of the status and privileges of permanent workmen amounts to unfair labour practice within the meaning of Section 2(ra) of the Industrial Disputes Act. Citing Section 3(i) the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, he has contended that the petitioners should have been conferred permanent status inasmuch as they have put in 480 days of service within a period of 24 calendar months. He has assailed the stand taken by the Tribunal that its role is limited in matters of this nature. It is his submission that instead of holding so, the Tribunal ought to have given a positive direction to the College to regularise the services of the petitioners.

7. In support of his contentions, the learned counsel for the petitioners has relied on the following judgments of the Supreme Court:

a. (2000) 7 SCC 109 in the matter of G.B. Pant University of Agriculture & Technology, Pantnagar, Nainital vs. State of U.P. and others (para 10)

> "Admittedly, cafeteria employees need succor for livelihood – would they continue to remain half-fed and half-clad as long as they live – is this the society that we feel proud of? Is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable – the University by compulsion directs students to be residents of the hostel with a definite ban on having food from outside agencies excepting under special circumstances and the

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provider of food, namely the staff of the cafeteria ought not to be treated as an employee of the University – whose employees are they if we may ask and we think it would not be impertinent on our part to ask the same – is it the consumer of food? Since when the consumer of food becomes the employer? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour on anybody but it is mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry a halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice on a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. A narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto – the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation, widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice – social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers cant thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice.

b. 2001 (3) SCC 574 in the matter of Gujarat Agricultural University vs. Rathod Labhu Bechar and others (paras 16 and 17)

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"The respondents' objection to item 1 of the proposed aforesaid scheme which requires completion of 10 years prior to 31.12.1999 for regularisation is that it is *de hors* the interest of the workers, specially when some of the workers are working from 1973 onwards. Thus this cut-off date for regularisation requires a re-look. With reference to Item 1 (a), the objection is, that the University had failed to produce any evidence to show any qualification for the posts on which they are to be absorbed. The recruitment rules which have been placed for the first time before this Court do lay down some qualifications but their experience of working for such a long time itself should be sufficient for their eligibility. With reference to Items (1)(b) and 1(d) the objection is, there should not be any phased regularisation, when work has been taken for such a long time. All such qualified workers should be regularised from the date they completed 10 years of their continuous service. . . Similarly, Item 3 refers to such daily wagers whether skilled, semi-skilled or unskilled who have not completed 10 years of service with a minimum of 240 days in each calendar year to be paid minimum wages at the rates as prescribed by the Government of Gujarat from time to time for daily for daily wagers falling in Class III and Class IV. The objection is the same that they should also be paid a minimum pay scale. No serious submission with reference to Item 4 has been made.

Thus, we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, whey they continue to work for year after year, the only opinion to the employer is to regularise them. Financial viability, no doubt, is one of the considerations but then such enterprise or institution should not be spread its arms longer than its means. The consequent corollary is, where work taken is not for a short period or limited for a season or where work is not of a part-time nature and if pattern shows that work is to be taken

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continuously year after year, there is no justification to keep such persons hanging as daily-rate workers. In such a situation, a legal obligation is cast on an employer; if there be vacant post, to fill it up with such workers in accordance with the rules, if any, and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If no posts exist then duty is cast to assess the quantum of such work and create such equivalent posts for their absorption."

c. (1998) 1 SCC 122 in the matter of Daily Rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch vs. Union of India and others (para 9)

". . .If a person does not have the feeling that he belongs to an organisation engaged in production, he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as casual labourers for years as is being done in the Posts and Telegraphs Department? Is it for paying them lower wages? Then it amounts to exploitation of labour. . . We are saying all this only to make the people understand the need for better management of manpower (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan:"Produce or perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy..."

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8. Per contra, the learned SCGSC appearing for the respondents has reiterated the stand of the respondents before the Tribunal that the petitioners could not be regularised since the matter of creation of posts is pending with the second respondent and they will be regularised as and when regular vacancies arise. In support of his contention that the petitioners are only temporary employees who cannot claim any right to permanent posts, he has relied on a judgment of the Supreme Court reported in **(2007) 1 SCC 408** in the matter of **Indian Drugs and Pharmaceuticals Limited vs. Workmen, Indian Drugs and Pharmaceuticals Limited** (13,17,18,23)

> "It may be mentioned that a daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post vide State of U.P. vs. Kaushal Kishore Shukla. The term "temporary employee" is a general category which has under it several sub-categories e.g. Casual employee, daily-rated employee, *ad hoc* employee, etc.
>
> Admittedly, the employees in question in court had not been appointed by following the regular procedure, and instead they had been appointed only due to the pressure and agitation of the union and on compassionate grounds. There were not even vacancies on which they could be appointed. As held in A. Umarani vs. Registrar, Cooperative Societies, such employees cannot be regularised as regularisation is not a mode of recruitment. In Umarani case, the Supreme Court observed that the compassionate appointment of a woman whose husband deserted her would be illegal in view of the absence of any scheme providing for such appointment of deserted women.
>
> In State of M.P. vs. Yogesh Chandra Dubey, this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

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We have underlined the observations made above to emphasise that the court cannot direct continuation in service of a non-regular appointee. The High Court's direction is hence contrary to the said decision."

9 He has placed further reliance on yet another judgment of the Supreme Court reported in (2006) 4 SCC 1 in the matter of Secretary, State of Karnataka and others vs. Umadevi (3) and others and the relevant paragraph reads as under:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not *sub judice*, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

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10. Admittedly, pursuant to the orders of the Tribunal in various batches of O.As. filed by the petitioners and other similarly placed persons, the respondents 3 and 4 have written to the second respondent seeking to create Group-D posts and as seen from the records, this exercise has been commenced as early as in the year 1992 but the same is still pending with the Government of India. As already stated, the reason cited by the respondents for non-creation of Group-D posts is that the matter is so complex in nature that it requires many formalities to be undergone. Of course, it may be right on their part to say so; but for that too, there is a certain time-limit and they cannot go on citing the same reason for years together. It is inferred that the matter is pending with the Government of India for the last 15 years and no finality has been arrived at as on date. The Tribunal, in its orders in various O.As., has repeatedly directed the College to regularise the services of the petitioners as and when vacancies arise but the orders of the Tribunal have not yet been given effect to. The categorical finding of the Tribunal that creation of posts is always within the administrative domain of the head of the department controlling the institution is agreeable; but, since the petitioners have not been confirmed for the last two decades and have been continued without job security, the matter requires a re-look.

11. In the **Uma Devi's** case (supra) relied on by the learned SCGSC, the Supreme Court has directed that the State Governments and their instrumentalities should take steps to regularise as *a one-time measure*, the services of such irregularly appointed, who have worked ten years or more, in duly sanctioned posts but not under cover of orders of the courts or of Tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being employed. But, in the instant case, the services of the petitioners have been necessitated in the College for over two decades continuously for its establishment, control and management and undisputedly, they have been accorded temporary status too. Of course, they have been given time scale of pay and their wages are on par with the regular employees but *sans* other benefits. Though the respondents 2 to 4 have consistently taken a stand that the petitioners will be absorbed after creation of Group D posts or as and when vacancies arise, the position which prevailed as on the date of the first direction of the Tribunal in the year 1992 is still prevailing as on date and there have been no fruitful efforts shown to be made in respect of creation of Group D posts. On the other hand, the petitioners had come across so much of hurdles and hardships all these years

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by putting in sincere and devoted service, but, without job security. If their work is of such a nature which has to be taken continuously, the consequent corollary is where the work taken is not for a short period or limited for a season or where work is not of a part-time nature, then, they should be conferred the permanent status.

12. Of course, the Constitution Bench Supreme Court has categorically held in Uma Devi's case that *as a one-time measure*, the services of irregularly appointed employees who have put in ten years of services should be regularised. But, in the case on hand, the petitioners have been accorded temporary status and have been put under time-scale of pay which is not so in the case referred to above. Further, in this case, the petitioners have been employed for more than two decades; yet, they have not been conferred permanent status despite repeated directions given by the Tribunal. That apart, it is also not the case of the College that the petitioners have been appointed *dehors* the rules or in other words, they have come through the back-door entry. When such is the case, if steps are not taken to regularise the services of the petitioners, the Governmental agency should not allow the petitioners to remain as temporary employees which amounts to sheer exploitation of labour as it is envisaged from the provisions of Section 2 (ra) of the Industrial Disputes Act. Therefore, in the peculiar circumstances of this case, though we are seized of the principle laid down in Uma Devi's case in framing a scheme for regularisation, since the case of the petitioners is much worse than the employees in Uma Devi's for the reasons already stated, taking cognizance of two decades of service rendered by the petitioners, temporary status and time-scale of pay offered to them and considering the fact that conferring on them permanent status would enable them to get retirement benefits, we are of the considered opinion that it will not be a wise policy to continue the services of the petitioners as temporary employees as done hitherto. Therefore, the continued exploitation should come to an end by creating a feeling of job security in the minds of the petitioners, at least by the fag end of their service. Though it is purely an administrative domain of the department to create posts, there must be a rational basis for keeping them under temporary status which is not there in this case.

13. Thus, having regard to the peculiar facts and circumstances of this case, viz., (i) the continuance of the petitioners in service for more than two decades, that too after conferring on them temporary status and putting them under time-scale of pay and (ii) the fact that the respondents 3 and 4 have written to the second respondent-Union of India in respect of creation of Group D posts for fitting in the petitioners, thereby complying with the repeated directions of the Tribunal and the

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matter has been kept pending by the latter for a long number of years, simply attributing the reason that creation of posts is a complex process involving cumbersome formalities, we direct,

i. the second respondent-Union of India to take positive steps to pass appropriate orders, based on the letters written by the respondents 3 and 4, for creation of Group D posts for the purpose of conferring permanent status on the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order and

ii. upon such passing of orders by the second respondent-Union of India as directed above, the respondents 3 and 4 are to give effect to the same, thereby conferring on the petitioners the status of permanent employees which they have been hoping for a long time, within a period of four weeks from the date of receipt of such orders from the second respondent-Union of India.

With the above directions, the writ petition stands disposed of without any order as to costs. Consequently, connected W.P.M.P. stands closed.

Cad

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1 The Registrar
Central Administrative Tribunal
Madras Bench
Chennai

2 The Secretary
Department of Environment and Forest
Government of India
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3 The Directorate of Forest Education
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Coimbatore - 641 002

_ one cc to Mr. T. Arunan, Advocate sr no. 33762
+ one cc to Mr. D. Hariparanthaman, Advocate sr no. 33337

NSM(CO)
NM(15.06.07)

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